

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUXURY LEASE COMPANY,

Plaintiff,

- against -

31 S. 2ND JIG AND JUSTIN WOLK,

Defendants.

19-cv-1952 (JGK) (KNF)

MEMORANDUM OPINION
AND ORDER

JOHN G. KOELTL, District Judge:

Pending before the Court are the objections by plaintiff Luxury Lease Company ("LLC") to the Report and Recommendation ("Report") of Magistrate Judge Fox, dated November 5, 2020. The plaintiff commenced this action against the defendants, 31 S. 2ND JIG and Justin Wolk, seeking damages for breach of contract and conversion. At all stages of this proceeding, the defendants have failed to appear, answer, or otherwise respond to either the Complaint or to Court Orders.

The case was referred to Magistrate Judge Fox for an inquest on damages, after the Court determined that a default judgment should be issued in favor of LLC. ECF No. 30, 31. On June 15, 2020, Magistrate Judge Fox ordered the plaintiff to file "(1) proposed findings of fact and conclusions of law; and (2) an inquest memorandum of law, accompanied by supporting affidavits and exhibits, setting forth proof of its damages." ECF No. 32. The plaintiff was also ordered to serve these papers on the

defendants, who were similarly ordered to file any opposing papers. Id. The plaintiff complied with this Order, and the defendants failed to respond. On November 5, 2020, Magistrate Judge Fox issued the Report, recommending that no damages be awarded, because the plaintiff failed to satisfy its burden of demonstrating its contractual damages to a reasonable certainty. As the Magistrate Judge noted, LLC "has established its claim for breach of contract" against the 31 S. 2ND JIG, Report at 7, but the Magistrate Judge stated that LLC's allegations are "insufficient to establish Wolk's liability" for breach of the lease agreement, because there is no evidence Wolk personally guaranteed the lease. Id. At 8. In addition, the Magistrate Judge stated that the plaintiff has failed to "point to a specific contractual clause giving rise to its damage calculations" or "make citations to any substantive law governing the damages it seeks." Id. at 9. Further, the Magistrate Judge noted that he cannot rely on certain submitted exhibits, because they were not properly authenticated. Id. at 10.

The plaintiff has filed a letter, objecting the Report, and requested an opportunity to submit further authenticated proof, in order to establish Wolk's personal liability and support damages, and to correct incorrect cross-references in its papers. ECF No. 37.

The Court has reviewed the Report de novo in light of the plaintiff's objections. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). The plaintiff appears to have complied with all of the Magistrate Judge's orders in this matter, and its mistakes and omissions appear inadvertent. The plaintiff's request to submit additional evidence to supplement its submission is a reasonable one. As the Court of Appeals has recently advised, when plaintiffs have complied with a Magistrate Judge's orders, such plaintiffs should be given a fair opportunity to address or correct minor deficiencies in their submissions. Hernandez Gomez v. 4 Runners, Inc., 769 F. App'x 1, 3 (2d Cir. 2019). See also Yunjian Lin v. Grand Sichuan 74 St Inc., No. 15-CV-2950, 2020 WL 3072290, at *2 (S.D.N.Y. June 10, 2020).

Therefore, the plaintiff's objections are sustained. The plaintiff will be granted an opportunity to cure the deficiencies identified in the Report, by filing a revised submission, supported by accompanying exhibits and affidavits. The matter is remanded to Magistrate Judge Fox, and the plaintiff is directed to comply carefully with Magistrate Judge Fox's further orders.

SO ORDERED.

**Dated: New York, New York
January 25, 2021**

**/s/ John G. Koeltl
John G. Koeltl
United States District Judge**